JD–48–10
Rochester, NY

STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CARR FINISHING SPECIALTIES, INC.
AND G.P.C. CONSTRUCTION, INC.

and Case 3-CA-27264

INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL, ORNAMENTAL AND
REINFORCING IRON WORKERS

Linda M. Leslie, Esq., of Buffalo, NY,
for the General Counsel.
Daniel R. Brice, Esq., of Syracuse, NY,
for the Charging Party.
Alan R. Peterman, Esq., of Syracuse, NY,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on June 22, 2010, in Rochester, New York, pursuant to a Complaint and Notice of Hearing (the complaint) issued by the Acting Regional Director for Region 3 of the National Labor Relations Board (the Board). The complaint, based upon a charge filed on August 3, 2009, by International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the Charging Party or Union), alleges that Carr Finishing Specialties, Inc. and G.P.C. Construction, Inc. (the Respondents, Respondent Carr or Respondent GPC), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondents filed a timely answer to the complaint denying that they had committed any violations of the Act.

Issues

The complaint alleges that the Respondents violated Section 8(a)(1) and (5) of the Act when they failed and refused to apply the terms and conditions of the 2006 and 2009 collective-bargaining agreements with the Union and specifically ceased making contributions to the contractual benefit funds.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party and the Respondents, I make the following

Findings of Fact

I. Jurisdiction

The Respondents are corporations with an office and place of business located in Phelps, New York, and have been engaged in the construction industry as a metal roofing, siding, and architectural panel contractor. Respondents in conducting their business operations provided services valued in excess of $50,000 to Rollison Construction Sales, LLC, (Rollison) an entity directly engaged in interstate commerce. At all material times, Rollison, with an office and place of business located in Rochester, New York, has been engaged as a metal contractor and metal supplier. Rollison in conducting its business operations, purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of New York. The Respondents admit and I find that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

Prior to 1994, Galvin P. Carr, III (Carr, III) was a member of Local 60 and worked as a journeyman ironworker for various companies.[1]

In 1994, while Carr, III was working on a job in Albany, New York, he was contacted by a representative of Rollison who inquired whether he was interested in performing some work on there behalf. Carr, III accepted the offer and completed the job. Upon completion of the work, Carr, III and his wife Sandra J. Carr (Sandra) formed and incorporated Respondent Carr. Sandra served as President and was the only shareholder while Carr, III held the position of Supervisor and made all purchases, bid on each job, and ran the day to day field operations. Sandra, who was not an ironworker, primarily handled the books and finances for Respondent Carr.[2]

From the commencement of its operations in 1994, Respondent Carr exclusively performed erector work for Rollison who provided the sole source of revenue for Respondent Carr. Between 1994 and October 31, 2008,[3] Respondent Carr operated as a union contractor and obtained its manpower from the Union.

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[1] In the fall of 1994, Union Business Agent Michael Altonberg spoke with Carr, III while they both were working at the outlet mall jobsite in Waterloo, New York. Carr, III informed Altonberg that he intended to go into business for himself.

[2] On November 16, 2006, Sandra as President and Carr, III as signor were authorized to execute checks on behalf of Respondent Carr with Manufacturers and Traders Trust Company. Sandra regularly paid Federal and New York State taxes, payroll checks, insurance premiums and all necessary expenses incurred by Respondent Carr. Examples of such checks can be found at GC Exh.19(b)-check # 1243, GC Exh.19(c)-check # 10620, GC Exh.19(d)-check # 10619, and GC Exh. 22(f)-check # 1044. Carr, III also wrote business related checks on the Respondent Carr checking account. Examples are found at GC Exh.19(e)-check # 1262, GC Exh.19(r)-check # 1362 and GC Exh.19(l)-check # 1328. Additionally, the record shows that Carr, III signed a check made payable to Attorney John Polimeni for the incorporation of Respondent GPC (GC Exh. 19(d)-check # 1259 and a check to purchase equipment for Respondent GPC (GC Exh. 19(r)-check # 1362). These checks are evidence of the commingling of funds between Respondent Carr and Respondent GPC.

[3] All dates are in 2008 unless otherwise indicated.

At all material times Upstate Iron Worker Employers' Association, Inc., (Association) has been an organization composed of employers, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. On or about May 1, 2006, the Association and the Union executed a collective-bargaining agreement covering the Unit effective by its terms from May 1, 2006 to April 30, 2009 (GC Exh. 5).[4] On or about April 30, 2009, the Association and the Union executed a collective-bargaining agreement covering the Unit effective by its terms from May 1, 2009 to April 30, 2012 (GC Exh. 6).

On or about September 29, 1997, Respondent Carr paid a membership application fee and executed a designation of bargaining agent. Since then it has been an employer-member of the Association, and designated the Association to represent it in negotiating and administering collective-bargaining agreements with the Union (GC Exh. 2 and 3). On or about September 29, 1997, Respondent Carr granted recognition to the Union as the exclusive collective-bargaining representative of the Unit and since that date the Union has been recognized as such representative by Respondent Carr without regard to whether the majority status of the Union has ever been established under the provisions of Section 9(a) of the Act.

On or about September 26, 2006, Respondent Carr executed a Letter of Assent whereby it agreed to be bound to the 2006 Agreement between the Union and the Association (GC Exh. 8).

During the early part of 2008, Sandra informed Carr, III that her full-time outside job combined with her duties and responsibilities for Respondent Carr were taking its toll. Concurrently, Rollison informed Carr, III that operating as a union contractor was causing it to lose business and it intended to operate as a non-union contractor going forward.

Accordingly, based on both of these factors, Sandra and Carr, III decided to form Respondent GPC. The company was incorporated on April 11 (GC Exh. 11 and 26).[5] Since that time Respondent GPC has continued to operate as a non-union contractor and after Respondent Carr went out of business on October 31, it completed a number of projects that had been started by Respondent Carr. Thereafter, when Respondent Carr ceased making benefit contributions for November and December 2008, the Union obtained a court judgment freezing their banking account and subsequently obtained authorization to withdraw those funds.

[4] The 2006 Agreement contains the following language at Article 29, Duration and Termination. "The Agreement with any amendments thereof made as provided for therein, shall remain in full force and effect from May 1, 2006 until Midnight of April 30, 2009 and unless written notice be given by the Iron Workers Upstate Locals of New York and Vicinity consisting of the Local Unions Nos. 33, 9, 440, 6 and 12 or the Employer Association to the other at least four (4) months prior to such date of the desire for change therein or to terminate the same, it shall continue in effect for an additional year thereafter."

[5] The record confirms that neither Sandra nor Carr, III informed the Union about the April 11 incorporation or the existence of Respondent GPC. Likewise, the Union was not notified about the operation of Respondent GPC after Respondent Carr ceased to exist on October 31.

On October 8, Carr, III opened a commercial checking account at Manufacturers and Traders Trust Company for Respondent GPC (GC Exh. 20(a)). On October 24, Sandra was added as an authorized signer on the checking account (GC Exh. 20(c)). Thereafter, Sandra wrote the majority of the business checks for Respondent GPC including payments for Federal and New York State taxes, insurance premiums, and payroll expenses.[6] The record also confirms that Carr, III wrote business checks from Respondent GPC's checking account and when Respondent GPC commenced work in October 2008, it did so with tools and insurance purchased with Respondent Carr's funds.

B. The Section 10(b) Affirmative Defense

Background and Facts

On December 31, the Respondents filed a Motion with the Board seeking to dismiss the complaint because they asserted that the subject unfair labor practice charge was time barred. In this regard, the Respondents argue that the Union first learned that Respondent GPC was performing bargaining unit work in either October 2008 or January 2009 rather then March 2009 as alleged in the August 3, 2009 unfair labor practice charge. By order dated April 21, 2010, the Board denied the Respondents Motion to dismiss the complaint but stated that the denial is without prejudice to the Respondent's right to renew its Section 10(b) argument at an appropriate time before the administrative law judge (JT Exh. 1(f)).

The Respondents assert that the subject charge alleges that they were operating as a single employer since March 1. However, the Respondents argue that one of the Union's attorneys in a letter dated January 30, 2009 stated "that it was recently discovered by my clients that Carr Finishing Specialties, Inc. "Carr" continues to perform bargaining unit work in the Union's jurisdiction", and in a subsequent letter dated February 13, 2009 the Union's attorney stated that "Carr Finishing Specialties, Inc., its successor and/or alter ego has performed bargaining unit work since October 2008, specifically, Galvin Carr, his son and employees of Carr Finishing were seen performing iron workers' work at the Rite Aid store in Canandaigua, New York in January 2009." (JT Exh. 2(a) and (c)).

Discussion

Although Section 10(b) bars a complaint based on unlawful conduct occurring more than 6 months before the filing and service of the charge, the Board has consistently held that the 10(b) period does not commence until the charging party has 'clear and unequivocal notice' of the violation. *Broadway Volkswagen,* 342 NLRB 1244, 1246 (2004), enfd. sub nom. *East Bay Automotive Council v. NLRB,* 483 F. 3d 628 (9th Cir. 2007). See also, *Vallow Floor Coverings, Inc.*, 335 NLRB 20, 20 (2001). "[T]he burden of showing that the Charging Party was on clear and unequivocal notice of the violation rests on the Respondent." *A&L Underground*, 302 NLRB 467, 469 (1991). Where a "delay in filing is a consequence of conflicting signals or otherwise ambiguous conduct," a finding of clear and unequivocal notice is unwarranted. Id. Board precedent has long distinguished between "a simple failure to abide by the terms of a collective bargaining agreement," or "material breach violation," on one hand, and "an outright repudiation of the agreement itself," or "total repudiation" on the other. *Vallow Floor,* supra (citing *A&L Underground*, supra). In the latter situation, when an employer completely repudiates the contract, the unfair labor practice is committed at the

[6] Examples of such checks are found at GC Exh. 22(f)-check # 1044, GC Exh. 21(r) - check #1021 and GC Exh. 21(a)-check #5000.

moment of the repudiation, and the 10(b) period commences once the union has clear and unequivocal notice of the act of repudiation. Under these circumstances, any subsequent refusals by an employer to honor the terms of the collective-bargaining agreement do not constitute unfair labor practices; rather, these acts are simply the consequences of the respondent's clear and unequivocal act of repudiation. For this reason, the union must file its charge within 6 months upon receiving notice of the repudiation, or a complaint based on that conduct will be time barred. Id. When an employer has not rejected a collective bargaining agreement in its entirety, but has instead refused to apply one or more of its provisions to unit employees, this scenario presents a breach of the contract's terms. Under these circumstances, each successive breach of the contract terms constitutes a separate and distinct unfair labor practice. Id. It is for this reason that even when a union has clear and unequivocal notice outside the 10(b) period that the respondent is failing to observe the terms of the contract, the complaint would not be time-barred. Instead, the 10(b) period would serve only as a limitation on the remedy to the 6 months prior to the filing of the unfair labor practice charge. Id; *Farmingdale Iron Works*, 249 NLRB 98, 99 (1980), enfd. 661 F.2d 910 (2d Cir. 1981).

In support of their affirmative defense, Respondents assert that the January 30 and February 13, 2009 letters from the Union attorney establish that the Charging Party knew by October 2008 or at least by January 2009 that Respondent Carr had created Respondent GPC as an alter ego. The fallacy of this argument is that no evidence has been presented to establish that Respondents provided the Union with clear and unequivocal notice that Respondent GPC existed. Indeed, neither the January 30 nor the February 13, 2009 letters, that the Respondents principally rely upon for this proposition, make any mention of Respondent GPC. Moreover, the Union in its January 30, 2009 letter requested the Respondents to provide its remittance reports, contributions and deductions for the period November 2008 to date and the February 13, 2009 letter asked for an explanation as to why work was not covered by the collective-bargaining agreement, the identity of the company performing the work and the name of the employer. Significantly, no such information was provided to the Union. *Hebert Industrial Corp.,* 319 NLRB 510, (1995) (charge not barred by Section 10(b) where respondent's failure to provide the union with any information or with accurate information was motivated by an intent to conceal the true nature of its relationship to its alter ego). Rather, without ever revealing the existence of Respondent GPC, Respondent Carr notified the Association and the Union on February 17, 2009 (GC Exh. 4) that it was revoking the September 26, 2006 Letter of Assent and effective immediately was withdrawing from the collective bargaining relationship with the Union. In my view, the February 17, 2009 notification that is within the 10(b) period, confirms that Respondent Carr recognized that it was bound by the terms of the 2006 agreement, and since the notification was not provided prior to four months of its April 30, 2009 expiration, the 2006 agreement continued in effect until April 30, 2010 (Article 29-Duration and Termination).[7] See, *Gem Management Co.,* 339 NLRB 489, 497 (2003).

[7] Under these circumstances, I reject the General Counsels position that by the operation of the language set forth in paragraph 9(b) of the complaint, the Respondents were bound to the 2009 agreement. Rather, in my view, the Association agreement is subservient to the 2006 collective-bargaining agreement. In this regard, the language setting forth the resignation procedures defer to the parties' collective-bargaining agreement. Therefore, I find that since the Respondents gave notice on February 17, 2009 that it revoked the Letter of Assent, revoked the authority of the Association to bargain on their behalf, and withdrew from the collective bargaining relationship with the Union, their obligation is to be bound by the terms of the 2006 collective-bargaining agreement until April 30, 2010. In its post-hearing brief the Respondents relying on *Wilson and Sons Heating and Plumbing v. NLRB,* 971 F. 2d

Continued

In summary, since the Union did not receive clear and unequivocal notice outside the 10(b) period that Respondent GPC was an alter ego and/or a single employer, the subject unfair labor practice charge was timely filed. Furthermore, even assuming the Union received such notice, the Respondents conduct amounted to a breach of contract, not a repudiation of contract. Consequently, the complaint is not time barred, and a violation of Section 8(a)(5) may be found based on the Respondents failure to apply the contract during the 6 months prior to the filing of the charge.

C. The 8(a)(1) and (5) Allegations

The General Counsel alleges that Respondent Carr and Respondent GPC have had substantially identical management, business purposes, operations, equipment, customers, and supervision and are, and have been at all material times, alter egos and/or a single employer within the meaning of the Act. It further alleges that since in or around October 2008, Respondents have failed and refused to apply the terms and conditions of the 2006 and 2009 agreements in violation of Section 8(a)(1) and (5) of the Act or alternatively were bound to a one year extension of the 2006 agreement, by operation of the Letter of Assent, and have therefore violated Section 8(a)(1) and (5) of the Act by failing and refusing to apply the terms of the one-year extension of the 2006 agreement.

Facts

The record confirms that Respondent Carr and Respondent GPC shared common premises and facilities and maintained the same fax numbers for both companies. Likewise, Respondents used the same business cell phone numbers for Carr III and Galvin P. Carr (Carr, IV)[8] that were paid for by each respective company. Additionally, the same computers and e-mail addresses were maintained by Respondent Carr and Respondent GPC.

The evidence establishes that Carr, III was the primary supervisor for Respondent

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758 (D.C. Cir. 1992) argue that the renewal and notice provisions of a collective-bargaining agreement only apply to the signatories and not those who have signed Letters of Assent. In that case, the evidence disclosed that the contract was an 8(f) construction agreement and the employer was not a member of the Employer Association. In the subject case, Respondent Carr was a member of the Association and therefore, must adhere to the provisions of the parties' agreement due to its untimely termination of the Letter of Assent. *C.E.K. Industrial Mechanical Contractors, Inc. v. NLRB,* 921 F. 2d 350, 355-56 (1st Cir. 1990).

[8] Carr, IV is the son of Sandra and Carr, III. He has been a field supervisor at Respondent GPC since at least October 31, and was a foreman at Respondent Carr prior to that date. Carr, IV resigned from the Union on November 30 (R. Exh. 1). Altonberg testified that on January 22, 2009 he observed Carr, III and Carr, IV on a job site in Canandaigua, New York, performing ironworkers work within the Union's jurisdiction. Accordingly, he alerted the representatives of the Union benefit funds regarding his observations. Thereafter, the fund attorney wrote a series of letters to Respondent Carr's attorney concerning the performance of work in the Union's jurisdiction and the delinquent payments that were due to the benefit funds (JT Exh. 2). Altonberg stated that that he first learned about the existence of Respondent GPC from his secretary in April 2009. He then wrote a letter to the Communications Officer of the Rochester School System seeking information about Respondent GPC (GC Exh. 13). The response that Altonberg received confirmed that Respondent GPC was incorporated on April 11, and was presently performing work for the School System.

Carr and serves as the owner, President and sole shareholder of Respondent GPC including his responsibilities of running the day to day field operations. Likewise, Sandra held the position of President for Respondent Carr, and primarily handled the company's financial obligations. She continued with those duties and responsibilities at Respondent GPC. The record confirms that on a number of occasions Sandra wrote checks to cash or to herself while handling the finances of Respondent GPC.

The General Counsel presented unrebutted evidence that Respondent Carr and Respondent GPC use the same insurance, disability, and workers compensation carriers. They also use the same payroll service provider, the identical contractor to rent lifts and purchase supplies, and both Respondent Carr and Respondent GPC worked exclusively for Rollison.

The evidence further establishes that both Respondent Carr and Respondent GPC performed work for the Rochester City School System. Indeed, Respondent Carr completed phase one of the Wayland-Cohocton Central School job and Respondent GPC completed the second phase (GC Exh. 16). The record shows that Carr, III, hired Carr, IV and Roger Carr (brother of Carr, III) to work for Respondent Carr and Respondent GPC. Indeed, Carr, IV and Roger Carr are presently employees of Respondent GPC.

The General Counsel also presented evidence that the funds of Respondent Carr and Respondent GPC were commingled. In this regard, checks that were made payable to Respondent Carr were deposited into Respondent GPC's checking account (GC Exh. 19(s)-19(u) and GC Exh. 21 (t)). Moreover, the General Counsel firmly established that Sandra wrote checks from Respondent GPC's checking account to pay Respondent Carr's unemployment insurance (GC Exh. 28-check # 1131), Respondent Carr's taxes (GC Exh. 23(d)-check # 1048), and Respondent Carr's payroll service provider (GC Exh. 21(p)-check # 1020).

Discussion

In determining whether two nominally separate employing entities constitute a single employer, the Board examines four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common control of labor relations. No single factor is controlling, and not all need to be present. Rather, single employer status ultimately depends on all the circumstances. It is characterized by the absence of an arm's length relationship among seemingly independent companies. *Mercy Hospital of Buffalo,* 336 NLRB 1282, 1283-1284 (2001) and *Dow Chemical Co.,* 326 NLRB 288 (1998).

With respect to the General Counsel's alternative theory that Respondents are alter egos, the Board utilizes additional factors and a broader standard in determining whether two ostensibly distinct entities are in fact alter egos. The Board considers whether the entities in question are substantially identical, including the factors of management, business purpose, operating equipment, customers, supervision as well as common ownership. *Crawford Door Sales Co.,* 226 NLRB 1144 (1976); *Advance Electric,* 268 NLRB 1001, 1002 (1984).

The evidence shows that Respondent GPC was established by Respondent Carr as a disguised continuation of Respondent Carr without informing the Union of its existence. In this regard, Carr, III served as a supervisor in both entities and ran the day to day field

operations while Sandra handled the financial obligations for both companies. Carr, III was the owner of Respondent GPC while Sandra was the owner, President and sole shareholder of Respondent Carr. *Fallon-Williams, Inc.,* 336 NLRB 602 (2001) (Board has not hesitated to find alter ego status even though entities had different owners, when the owners were in a close familial relationship). See also, *Alexander-Painting, Inc.,* 344 NLRB 1346 (2005).

The lines of responsibility often crossed with the commingling of funds. Indeed, the evidence conclusively establishes that Sandra deposited funds of Respondent Carr into the checking account of Respondent GPC and paid obligations of Respondent Carr from the checking account of Respondent GPC.

Central control of labor relations is present since Roger Carr and Carr, IV were employed by both companies during the relevant time period.[9] While Respondent Carr operated as a union contractor until it ceased to exist on October 31, it operated with the above two employees in addition to new hires as a non-union contractor after that date.

There is no question that there was interrelation of operations between Respondent Carr and Respondent GPC. In this regard, both companies were engaged in the construction industry as metal roofing and siding panel contractors, shared common premises and facilities, and worked solely for Rollison who provided both companies their sole source of revenue. Likewise, as discussed above, their books were commingled along with records and financial information. Additionally, the record confirms that the same office equipment, tools of the trade, cell phones and computers were used by both Respondent Carr and Respondent GPC. Lastly, the testimony establishes that both Respondent Carr and Respondent GPC used the same providers for payroll services (Paychex), workers compensation (Main Street America), insurance broker (CIG), disability insurance (First Rehabilitation Life), and equipment supplier (Harmco).

The Respondent argues, in its post-hearing brief, that the creation of an enterprise (Respondent GPC) for the purpose of obtaining non-union work does not establish an unlawful motive and cites for this proposition *First Class Maintenance Service, Inc.,* 289 NLRB 484 (1988) and other cases. The fallacy of relying on this argument, in comparison to the facts in the subject case, is that the Board held in *First Class Maintenance* that the separate entity did not share supervision, management, or ownership, and the former company continued as a separate ongoing business. Here, as found above, Respondent GPC shares these indicia with Respondent Carr. Moreover, Carr, III or Sandra never informed the Union that it established Respondent GPC, a factor that indicates unlawful motivation.

Based on the forgoing, I find that the General Counsel has conclusively established the criteria for alter ego and/or single employer status. Therefore, since the Respondents have failed and refused to apply the terms and conditions of the 2006 collective-bargaining agreement, they have failed and refused to bargain in good faith with the exclusive bargaining representative of their employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act.

[9] The record confirms that Roger Carr worked for Respondent Carr in 1994 and 2006 and presently is employed with Respondent GPC.

Conclusions of Law

1. Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to recognize the Union as the collective-bargaining representative of all employees performing work, as set forth in Article I of the 2006 Working Agreement between the Association and the Union, and by failing to apply to unit employees their collective-bargaining agreement with the Union, the Respondents', alter egos and/or a single employer, violated Section 8(a)(1) and (5) of the Act.

Remedy

Having found that the Respondents are alter egos and/or a single employer which engaged in certain unfair labor practices, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents shall be required to recognize and, on request, bargain with the Union as the collective-bargaining representative of all employees performing work, as set forth in Article I of the 2006 Working Agreement between the Association and the Union. The Respondents shall also be required to make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondents' failure to apply the collective-bargaining agreement between the Association and the Union as prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F. 2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

Finally, having found that the Respondents violated Section 8(a)(1) and (5) of the Act by failing to continue in effect all the terms and conditions of their existing collective-bargaining agreement by failing, since October 2008, to make the contractually required contributions to the Union's fringe benefit funds set forth in the collective-bargaining agreement, I shall order the Respondents to make all required benefit fund contributions since October 2008 to April 30, 2010, including any additional amounts applicable to such funds as set forth in *Merryweather Optical Co.,*240 NLRB 1213, 1216 fn 7 (1979). In addition, the Respondents shall reimburse unit employees for any expenses resulting from the Respondent's failure to make the required contributions to the funds, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891 fn 2 (1980), enfd. mem. 661 F. 2d 940 (9th Cir. 1981), Such amounts are to be computed in the manner set forth in *Ogle Protection Service,* supra, with interest as prescribed in *New Horizons for the Retarded,* supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondents, Carr Finishing Specialties, Inc., and G.P.C. Construction, Inc., Phelps, New York, its officers, agents, successors, and assigns, shall

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

(a) Failing and refusing to recognize the Union as the collective-bargaining representative of all employees performing work, as set forth in Article I of the 2006 agreement between the Association and the Union.
(b) Failing and refusing to apply to unit employees the collective-bargaining agreement between the Association and the Union.
(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.
(b) Make whole all bargaining unit employees and all benefit funds for any loss of income contributions, or benefits, and for any expenses incurred in connection with those benefit fund losses by those employees, in the manner set forth in the remedy section of this decision.
(c) Preserve and within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this decision.
(d) Within 14 days after service by the Region, post at its facility in Phelps, New York, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondents authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 31, 2008.
(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[11] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. August 20, 2010

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Bruce D. Rosenstein
Administrative Law Judge

APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to recognize the Union as the exclusive collective-bargaining representative of all employees performing work as set forth in Article I of the 2006 Agreement between the Association and the Union.

WE WILL NOT fail or refuse to apply to unit employees the collective-bargaining agreement between the Association and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize the Union as the exclusive collective-bargaining representative of employees in the bargaining Unit and will adhere to all provisions in our existing collective-bargaining agreement with the Union.

WE WILL make whole our bargaining unit employees, and all benefit funds, for any loss of income, contributions, or benefits suffered as a result of the failure to apply to those employees the collective-bargaining agreement between the Association and the Union, and for any expenses incurred in connection with those benefit fund losses, with interest.

Carr Finishing Specialties, Inc. and G.P.C. Construction, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website:

www.nlrb.gov.

130 S. Elmwood Avenue
Suite 630
Buffalo, New York 14202
Hours: 8:30 a.m. to 5 p.m.
716-551-4931.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 716-551-4946.

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